

YEN PILCH ROBAINA & KRESIN PLC

6017 N. 15th Street
Phoenix, Arizona 85014
Telephone: (602) 682-6450
Ty D. Frankel (027179)
TDF@yprklaw.com

YEN PILCH ROBAINA & KRESIN PLC

9655 Granite Ridge Drive, Suite 200
San Diego, California 92123
Telephone: (619) 756-7748
Patricia N. Syverson (020191)
PNS@yprklaw.com

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Ian A. Henderson, on behalf of himself
and all those similarly situated,

Plaintiff,

v.

San Diego Sunrise Management
Company, a California corporation,

Defendant.

Case No.

**COLLECTIVE ACTION AND CLASS
ACTION COMPLAINT**

[JURY TRIAL DEMANDED]

Plaintiff Ian A. Henderson (“Plaintiff”), individually and on behalf of all others similarly situated, for his Complaint against Defendant San Diego Sunrise Management Company (“Sunrise”) alleges as follows:

I. NATURE OF THE CASE

1. Plaintiff brings this action against Sunrise for its unlawful failure to pay overtime wages in violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) and its unlawful failure to pay wages due in violation of the Arizona Wage Statute, A.R.S. § 23-350 *et seq.*

1 2. This action is brought as a collective action pursuant to 29 U.S.C. § 216(b) to
2 recover unpaid overtime compensation, liquidated damages, statutory penalties and
3 damages owed to Plaintiff and all others similarly situated. This lawsuit is also brought as
4 a class action under Federal Rule of Civil Procedure 23, to recover unpaid compensation
5 and treble damages resulting from Sunrise’s violation of the Arizona Wage Statute. For
6 collective action and class action purposes, the proposed Class consists of:

7 All current and former Sunrise employees, regardless of actual
8 title, who worked in Arizona in the last three years and whose
9 job duties include providing customer service and support to
10 residents and prospective residents at property sites and
11 processing rental applications and maintenance service
12 (“Leasing Professionals”).

13 3. For at least three (3) years prior to the filing of this action (the “Liability
14 Period”), Sunrise had and continues to have a consistent policy and practice of suffering or
15 permitting employees who worked as Leasing Professionals, including Plaintiff, to work in
16 excess of forty (40) hours per week, without timely paying them proper overtime
17 compensation as required by federal and state wage and hour laws, as well as failing to
18 timely pay for all wages due, including bonuses, in violation of state law. Plaintiff seeks to
19 recover unpaid wages, including unpaid overtime compensation, interest thereon, statutory
20 penalties, reasonable attorneys’ fees and litigation costs on behalf of himself and all
21 similarly situated current and former Leasing Professionals. Plaintiff and all similarly
22 situated current and former Leasing Professionals who may opt-in pursuant to 29 U.S.C. §
23 216(b) also seek liquidated damages.

24 **II. JURISDICTION AND VENUE**

25 4. This Court has jurisdiction over the subject matter and the parties hereto
26 pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

1 24. Rather, Sunrise improperly stated that the Company had discretion as to
2 whether to pay Plaintiff bonuses he had earned once he put the Company on notice that he
3 was resigning his employment there.

4 25. However, Plaintiff had a reasonable expectation to be paid the bonuses that
5 had accrued and became due and owing prior to the conclusion of his employment with
6 Sunrise.

7 26. For example, Plaintiff earned bonuses in April 2022, which should have been
8 paid out in May 2022.

9 27. Sunrise failed to pay Plaintiff the bonuses he earned and that had become due
10 because Plaintiff put in his notice that he was leaving employment with Sunrise effective
11 May 12, 2022.

12 28. In addition, Sunrise failed to pay Plaintiff all the overtime wages he was due
13 during his employment.

14 29. For example, for the pay period from January 1, 2022 until January 15, 2022,
15 Plaintiff was paid \$18.00 per hour for 80 hours and \$27.00 per hour for 5.13 hours of
16 overtime. During that same pay period, Plaintiff earned a \$300 non-discretionary bonus.
17 However, Sunrise failed to calculate his overtime rate to include the non-discretionary
18 bonus he earned in violation of the FLSA.

19 30. Similarly, for the pay period from February 1, 2022 until February 15, 2022,
20 Plaintiff was paid \$18.00 per hour for 88.93 hours and \$27.00 per hour for 3.58 hours
21 designated on the pay stub as overtime. During that same pay period, Plaintiff earned a
22 non-discretionary bonus of \$500. Sunrise failed to pay Plaintiff time and a half his regular
23 rate of pay for the hours of overtime he worked this period, by not accounting for his non-
24 discretionary bonus when calculating his overtime rate in violation of the FLSA.

25 31. There were also times when Sunrise paid Plaintiff his regular hourly rate for
26 hours worked over forty in a workweek. For example, for the pay period from March 16,
27 2022 until March 31, 2022, Plaintiff was paid \$18.00 per hour for 99.63 hours and \$27.00
28 per hour for 2.3 hours designated on the pay stub as overtime. Sunrise improperly calculated

1 overtime Plaintiff worked at his straight hourly rate of \$18.00 for hours he should have been
2 paid at the proper overtime rate required by the FLSA.

3 32. These examples demonstrate how Sunrise failed to pay Plaintiff all the
4 overtime he was due, including overtime that was properly calculated as required by the
5 FLSA.

6 33. There were numerous other pay periods in which Sunrise failed to pay
7 Plaintiff overtime at the rate required by the FLSA.

8 34. Despite having worked numerous hours of overtime, Plaintiff was not paid
9 proper overtime wages at a rate of one and one-half times his regular rate of pay for hours
10 worked over forty in a work week.

11 35. Sunrise also failed to timely pay Plaintiff all the wages that he was due in
12 violation of the Arizona Wage Statute, including non-discretionary bonuses he earned and
13 hours and wages that were improperly calculated by Sunrise.

14 36. For example, Plaintiff was due numerous non-discretionary bonuses for
15 apartments he leased prior to the conclusion of his employment on May 12, 2022. When
16 he put in his notice of resignation, he notified Sunrise of the non-discretionary bonuses he
17 expected to be paid on the next regular pay day in accordance with Arizona law.

18 37. Rather than pay Plaintiff on the next regular pay date as required by Arizona
19 law when an employee quits, Sunrise did not issue a final paycheck to Plaintiff until June
20 6, 2022, which is after the next regular pay day that would have occurred in late May 2022.

21 38. In addition to paying Plaintiff his final paycheck late, Sunrise also failed to
22 pay Plaintiff wages he was due with his final paycheck. Plaintiff's paystub dated June 6,
23 2022 only accounted for hours worked in accordance with his hourly rate, and Sunrise failed
24 to pay Plaintiff for numerous non-discretionary bonuses he had earned during his
25 employment.

26 39. For example, Plaintiff earned non-discretionary bonuses based on properties
27 he leased in April and May of 2022. However, Sunrise did not pay him for the bonuses he
28 had earned during his employment.

1 40. When Plaintiff inquired about the missing bonuses that he had earned and had
2 accrued prior to the conclusion of his employment, Sunrise stated that it had a policy of not
3 paying out bonuses that Leasing Professionals earned during their employment if the
4 employee had left the company before they received their paychecks that were to include
5 the bonuses. This occurred even when the employee had earned the bonuses and they had
6 become due and owing prior to the Leasing Professional's departure from the Company.

7 41. In addition, Sunrise failed to timely pay numerous hours of overtime Plaintiff
8 earned during his employment in violation of federal and Arizona law.

9 42. Plaintiff's duties, hours and compensation are indicative of the similarly
10 situated Leasing Professionals.

11 43. Sunrise's improper policies and compensation practices applied to Plaintiff
12 and all similarly situated Leasing Professionals he seeks to represent.

13 44. Sunrise provided its Leasing Professionals, including Plaintiff, with written
14 policies and procedures uniformly applicable to all Leasing Professionals governing the
15 compensation practices applicable to them.

16 45. All the Leasing Professionals are uniformly subject to the same unlawful
17 compensation practices that Plaintiff was subject to during his employment at Sunrise.

18 **V. COLLECTIVE ACTION ALLEGATIONS**

19 46. Plaintiff brings his claim under the FLSA, 29 U.S.C. § 201 *et seq.*, as a
20 collective action. Plaintiff brings this action on behalf of himself and others similarly
21 situated, properly defined in paragraph 2 above.

22 47. Sunrise's illegal overtime wage practices were widespread with respect to the
23 proposed Class. The failure to pay proper overtime was not the result of random or isolated
24 individual management decisions or practices.

25 48. Sunrise's overtime wage practices were routine and consistent. Throughout
26 the Liability Period, employees regularly were not paid the proper overtime wage despite
27 working in excess of forty hours per week.

1 49. Other Leasing Professionals performed the same or similar job duties as
2 Plaintiff. Moreover, Leasing Professionals regularly worked more than forty hours in a
3 workweek. Accordingly, the employees victimized by Sunrise's unlawful pattern and
4 practices are similarly situated to Plaintiff in terms of employment and pay provisions.

5 50. Sunrise's failure to pay overtime compensation at the rates required by the
6 FLSA result from generally applicable policies or practices and do not depend on the
7 personal circumstances of the members of the collective action. Thus, Plaintiff's experience
8 is typical of the experience of the others employed by Sunrise.

9 51. All Leasing Professionals, including Plaintiff, regardless of their precise job
10 requirements or rates of pay, are entitled to overtime compensation for hours worked in
11 excess of forty (40). Although the issue of damages may be individual in character, there
12 is no detraction from the common nucleus of facts pertaining to liability.

13 **VI. CLASS ACTION ALLEGATIONS**

14 52. The state law claims under the Arizona Wage Statute are brought as a class
15 action under Federal Rules of Civil Procedure 23(a) and (b)(3). The Class is defined in
16 paragraph 2 above.

17 53. Throughout the Liability Period, Sunrise has employed many Leasing
18 Professionals in Arizona. The Class is so numerous that joinder of all members is
19 impracticable. Members of the Class can readily be identified from business records
20 maintained by Sunrise.

21 54. Proof of Sunrise's liability under the Arizona Wage Statute involves factual
22 and legal questions common to the Class. Whether Sunrise paid Class members the proper
23 wages due in accordance with A.R.S. §§ 23-351, 23-353, 23-355 is a question common to
24 all Class members, including but not limited to whether they were paid all the non-
25 discretionary bonuses and other wages earned in the time required by Arizona law.

26 55. Like Plaintiff, all Class members worked without being timely paid statutorily
27 required wages. Plaintiff's claim is therefore typical of the claims of the Class.
28

65. Sunrise's failure to pay overtime to Plaintiff and the Leasing Professionals was willful. Sunrise knew Plaintiff and the Leasing Professionals work overtime but failed to properly pay overtime wages. Sunrise had no reason to believe its failure to pay overtime was not a violation of the FLSA.

66. Plaintiff and the Leasing Professionals are entitled to statutory remedies provided pursuant to 29 U.S.C. § 216(b), including but not limited to liquidated damages and attorneys' fees.

VIII. COUNT TWO

(Failure to Pay Timely Wages Due - Arizona Wage Statute

A.R.S. § 23-350 *et seq.*)

67. Plaintiff, on behalf of himself and all those similarly situated, incorporates by reference all of the above allegations as though fully set forth herein.

68. At all material times hereto, Plaintiff and the Leasing Professionals were employed by Sunrise within the State of Arizona and have been entitled to the rights, protections, and benefits provided under the Arizona Wage Statute.

69. Sunrise was aware of its obligation to pay timely wages pursuant to A.R.S. §§ 23-351-353.

70. Sunrise was aware that, under A.R.S. §§ 23-351-353, it was obligated to pay all wages due to Plaintiff and the Leasing Professionals.

71. Sunrise failed to timely pay Plaintiff and the Leasing Professionals wages they are due without a good faith basis for withholding the wages.

72. Sunrise has willfully failed and refused to timely pay wages due to Plaintiff and the Leasing Professionals. As a result of Sunrise's unlawful acts, Plaintiff and the Leasing Professionals are entitled to the statutory remedies provided pursuant to A.R.S. § 23-355.

IX. REQUESTED RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays:

1 A. For the Court to order Sunrise to furnish to Plaintiff's counsel a list of the
2 names and contact information of all current and former Leasing Professionals who worked
3 for a Sunrise in Arizona within the past three years;

4 B. For the Court to authorize Plaintiff's counsel to issue notice at the earliest
5 possible time to all current and former Leasing Professionals who worked for Sunrise in
6 Arizona within the past three years immediately preceding this action, informing them that
7 this action has been filed and the nature of the action, and of their right to opt-in to this
8 lawsuit if they worked during the Liability Period;

9 C. For the Court to declare and find that Sunrise committed one or more of the
10 following acts:

11 i. violated overtime provisions of the FLSA, 29 U.S.C. § 207, by failing
12 to pay overtime wages to Plaintiff and persons similarly situated who opt-in to this action;

13 ii. willfully violated overtime provisions of the FLSA, 29 U.S.C. § 207;

14 iii. willfully violated the Arizona Wage Statute by failing to timely pay all
15 wages due to Plaintiff and persons similarly situated;

16 D. For the Court to award compensatory damages, including liquidated damages
17 pursuant to 29 U.S.C. § 216(b) and treble damages pursuant to A.R.S. § 23-355, to be
18 determined at trial;

19 E. For the Court to award interest due and accruing from the date such amounts
20 were due;

21 F. For the Court to award such other monetary, injunctive, equitable, and
22 declaratory relief as the Court deems just and proper;

23 G. For the Court to award restitution;

24 H. For the Court to award Plaintiff's reasonable attorneys' fees and costs
25 pursuant to 29 U.S.C. § 216(b) and other applicable law;

26 I. For the Court to award pre- and post-judgment interest;

27 J. For the Court to award Plaintiff's resulting consequential damages, in an
28 amount to be proven at trial; and

1 K. For such other relief as the Court deems just and proper.

2 **X. DEMAND FOR JURY TRIAL**

3 73. Plaintiff, on behalf of himself and all others similarly situated, hereby
4 demands trial of his claims by jury to the extent authorized by law.

5 DATED: July 14, 2022.

6 **YEN PILCH ROBAINA & KRESIN PLC**

7 By /s/ Ty D. Frankel
8 Ty D. Frankel
9 6017 N. 15th Street
Phoenix, Arizona 85014

10 **YEN PILCH ROBAINA & KRESIN PLC**

11 Patricia N. Syverson
12 9655 Granite Ridge Drive, Suite 200
13 San Diego, California 92123

14 Attorneys for Plaintiff
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